



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Introduced:	02/27/09	Bill No:	SCA 13/ SB 534
Tax:	Property Taxes	Author:	Strickland
Related Bills:			

BILL SUMMARY

This bill would place a constitutional amendment before voters to provide that assessable “new construction” for property tax purposes does not include the construction or addition of a small wind turbine or geothermal heat pump system.

ANALYSIS

CURRENT LAW

The law requires that when new construction occurs the total assessed value of the property must be increased by an amount equal to the added value of the construction or addition.

Article XIII A, Section 2(c) of the California Constitution gives the Legislature the authority to exclude certain items from the definition of “new construction.”

Currently, no exclusions exist for the addition of wind turbines or geothermal heat pumps. There is, however, a new construction exclusion for the construction or addition of active solar energy systems.

PROPOSED LAW

Senate Constitutional Amendment. SCA 13 would, if approved by voters, add new paragraph (6) to Article XIII A, Section 2(c) of the Constitution to provide the Legislature with the authority to exclude from the definition of new construction:

“[t]he construction or addition, on or after January 1, 2010, of a small wind turbine or geothermal heat pump system, as defined by the Legislature.”

Companion Implementing Statutory Amendments. SB 534 would add Revenue and Taxation Code Section 74.8 to provide the following definitions:

- **“Geothermal heat pump system”** means a system that uses the constant temperature of the earth as the exchange medium for energy instead of the outside air temperature.
- **“Small wind turbine”** means a turbine that spins on top of a tower to turn the wind into usable electricity rated at a maximum of 15 kilowatts.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable at the same percentage of “fair market value,” unless specifically excluded, exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines “fair market value” as the assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the “base year value.” Barring actual physical new construction

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or a change in ownership, annual adjustments to the base year value are limited to 2% or the rate of inflation, whichever is less. Article XIII A, Section 2 provides for certain exclusions from the meaning of “change in ownership” and “newly constructed” as approved by voters via constitutional amendments.

New Construction. While the constitution does not define the terms “newly constructed” or “new construction,” Revenue and Taxation Code Section 70 defines them, in part, to mean:

Any addition to real property, whether land or improvements (including fixtures), since the last lien date.

Any **alteration** of land or improvements (including fixtures) since the last lien date that constitutes a “**major rehabilitation**” or that converts the property to a different use. A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

When new construction occurs, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as “new construction” and is added to the property’s existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property’s existing base year value. (Section 71)

Constitutional Amendments. Over the years, voters have approved eight constitutional amendments to exclude certain types of construction activity from assessment as “new construction.” Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Election	Subject	Code
8	November 1978	Disaster Reconstruction	§70(c)
7	November 1980	Active Solar Energy Systems	§73
23	June 1984	Seismic Safety (Unreinforced Masonry)	§70(d)
31	November 1984	Fire Safety Systems	§74
110	June 1990	Disabled Access Improvements (Homes)	§74.3
127	November 1990	Seismic Safety Retrofitting & Hazard Mitigation	§74.5
177	June 1994	Disabled Access Improvements (All Properties)	§74.6
1	November 1998	Environmental Contamination Reconstruction	§74.7

Propositions Rejected by Voters. Some constitutional amendments proposing new construction exclusions post-Proposition 13 have, at least initially, failed. Those include:

- Proposition 5 in 1980 to exclude reconstruction after a non-Governor declared disaster and seismic safety new construction exclusion. (Seismic safety exclusions were subsequently approved by Propositions 23 in 1984 and Proposition 127 in 1990.)
- Proposition 7 in 1982 for fire sprinkler systems. (Subsequently approved by Proposition 31 in 1984)
- Proposition 34 in 1984 for additions, alternations and rehabilitation of owner occupied historical homes.
- Proposition 178 in 1994 for water conservation equipment.

BACKGROUND

Wind Energy. Senate Bill 1306 (Ch. 1245, Stats. 1980) added Section 73 to implement Proposition 7. Section 73 provided that the term "newly constructed" shall not include the construction or addition of any solar energy systems as defined in Revenue and Taxation Code Section 17052.5(h)(6)(A). However, this provision, which was for state income tax credit purposes, defined solar energy systems to include passive thermal systems, semi-passive thermal systems, active thermal systems, photovoltaic systems, and wind driven systems. Some of these types of systems were not authorized by the Proposition. Consequently, Assembly Bill 375 (Ch. 239, Stats. 1981) deleted the reference to Section 17052.5 and instead provided that this new construction exclusion applied only to *active* solar energy systems. Thus, AB 375 clarified that the exclusion was not applicable to passive solar energy systems or to wind driven systems. AB 375 was an urgency bill and took effect on July 20, 1981. Thus, wind energy systems were inadvertently included in the solar energy new construction exclusion for the first six months of 1981 under the laws in effect at that time.

Related Legislation. SCA 1X (Poochigian) and SCA 1XX (Poochigian) of 2001 proposed a new construction exclusion, in part, for improvements that generate electricity for use on that real property. These measures were not enacted.

COMMENTS

6. **Is this exclusion intended to be limited to a wind turbine that converts wind energy to electrical energy for use primarily by the owner of the property on which the windmill or wind turbine is located?** In other words, is this bill intended to encourage clean energy for on-site use with only incidental excess energy transmitted to a utility for use by others?

7. **Are wind farms eligible for the new construction exclusion?** Would a wind farm comprised of a field of individual small wind turbines – each under 15 kilowatts - that sells power to public utilities also be eligible for the exclusion? Would landowners that act as turbine farm hosts for commercial developers of wind energy also be eligible for the new construction exclusion?
8. **Are towers included?** Wind turbines are generally placed on a tower. As currently drafted, this bill appears to be limited to the turbine itself. A "small wind system" encompasses not only the turbine, but the tower, foundation, and wiring equipment necessary for installation.

This bill would not impact the Board's administrative costs.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Geothermal Heat Pump Systems. The initial cost of a geothermal heat pump system varies greatly according to local labor rates, lot geology and size, type of system installed, and specific equipment selected. When drilling and installation are included, such a system could average \$40,000. Sales of these systems in California are not known, but as an order of magnitude, if annual sales totaled 100, the revenue loss would be \$40,000 (100 x \$40,000 multiplied by the property tax rate of one percent).

Small Wind Turbines. With respect to wind turbines, data from the California Energy Commission indicate that about 40 wind turbines of 15kws or less are purchased annually, with an average price of about \$40,000. Thus, exempting small wind turbines would produce an annual property tax revenue loss of about \$16,000 (40 x \$40,000 multiplied by the property tax rate of one percent).

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REVENUE SUMMARY

This measure would result in a revenue loss of \$40,000 for geothermal heat pump systems and \$16,000 for small wind turbines, for a total annual revenue loss of \$56,000.

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